

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS REGULATING SMOKING IN PUBLIC PLACES IN THE CITY OF FRISCO, TEXAS WITH CERTAIN EXCEPTIONS; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City Council of the City of Frisco, Texas (the "City Council") has investigated and determined that the smoking of tobacco or weeds or other plant products has been demonstrated to have a detrimental effect on not only the smoker but others in close proximity to the smoker; and

WHEREAS, the City Council has investigated and determined that it is the right of all citizens to be able to choose for themselves whether to smoke either actively or passively; and

WHEREAS, the City Council has further investigated and determined that it will be advantageous and beneficial to the City of Frisco, Texas ("Frisco") and its citizens to provide patrons of retail and service establishments a smoke-free environment; and

WHEREAS, the City Council has further investigated and determined that it will be advantageous and beneficial to Frisco and its inhabitants to regulate smoking in public places in Frisco, with certain exceptions, to reduce detrimental effects on not only the smoker, but others in close proximity to the smoker and to further the health, safety and welfare of Frisco and its citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS:

SECTION 1:     Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2:     Purpose. The City Council hereby declares its purpose in enacting this Ordinance is to further the public health, safety and welfare of Frisco and its citizens through the regulation of smoking in public places with certain exceptions.

SECTION 3: Definitions.

***Air Barrier System*** as used herein shall mean a system that creates an air curtain to prevent drift or penetration of tobacco smoke from a smoking area to a non-smoking area not allowing drift or penetration from the ceiling down to twenty-four inches (24") above the floor.

***Air Purification System*** as used herein shall mean an electrically powered hospital grade, hepa media filter that will clean all of the air in the designated smoking area every fifteen (15) minutes as follows: not less than ninety-five percent (95%) of 0.3 micron particulate efficiency including, but not limited to, dust, smoke, pollen, mold spores, bacteria, tobacco smoke, viruses and allergens and not less than ninety-five percent (95%) removal of gases, vapors, Volatile Organic Compounds (V.O.C.) and odors.

***Building Official*** as used herein shall mean the City of Frisco, Texas' Building Official, or his/her designee, charged with, among other things, the duties of enforcing and administering this Ordinance.

***Designated Smoking Area*** as used herein shall mean an area which shall not exceed fifty percent (50%) of the net floor area and is equipped with an air purification system or a separate ventilation system and having a physical barrier or air barrier system, if required by a licensed professional engineer approved by Frisco, between it and the non-smoking area to prevent air from the smoking area from being drawn across the non-smoking area.

***Food products establishment*** as used herein means any restaurant, coffee shop, cafeteria, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria or eating establishment or any other eating establishment, organization, club, boardinghouse or guesthouse, which gives or offers for sale food to the public, guests, patrons or employees as well as kitchens in which food is prepared on the premises for serving elsewhere, including, but not limited to, catering facilities. Other food product establishments include, but are not limited to, grocery stores and food markets, not including those outdoors.

***Frisco*** as used herein shall mean the City of Frisco, Texas.

***Net Floor Area*** as used herein shall mean the floor area of the interior of the establishment normally utilized and accessible by patrons and/or the general public, as determined by the Building Official pursuant to Frisco's Building Code, as amended.

***Physical Barrier*** as used herein shall mean a barrier that will form an effective membrane continuous from outside wall to outside wall, from a smoke barrier to a smoke barrier, from floor to floor or roof above, or a combination thereof, including continuity through all concealed spaces, such as above suspended ceilings, interstitial structural and mechanical spaces. Transfer grilles, louvers and similar openings shall not be used in these partitions. Self closing, tight fitting doors are permitted in such barriers.

***Private Club*** as used herein shall mean any building, premise or portion thereof which is permitted by the State of Texas and allowed by special use permit by Frisco as a private club for the storing, possession and dispensing for on-premise consumption of alcoholic beverages.

***Private Club*** does not include a premise operated by an organization which is not available to and not customarily used by the general public and entry and privileges thereto are established by regulations of that organization distinct from a Texas Alcohol and Beverage private club membership.

**Public Area** as used herein shall mean any enclosed, indoor area that is open to or is used by the general public and includes, but is not limited to, retail stores, grocery stores, offices, professional, commercial or financial establishments, restaurants, public and private institutions of education, health care facilities, nursing and convalescent homes, residential treatment facilities and buildings owned or occupied by political subdivisions.

**Retail and Service Establishment** as used herein shall mean any establishment which sells goods or services to the general public.

**Retail Tobacco Store** as used herein shall mean a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of the other products is merely incidental.

**Service Line** as used herein shall mean an indoor line or area where persons await service of any kind, regardless of whether or not such service involves the exchange of money. Such service shall include, but is not limited to, sales, giving of information, directions or advice and transfers of money or goods.

**Smoke or Smoking** as used herein shall mean and includes the carrying or holding of a pipe, cigar or cigarette of any kind which is burning, or the igniting of a pipe, cigar or cigarette of any kind which is burning.

**Ventilation System** as used herein shall mean an HVAC system designed by a licensed professional engineer to meet the requirements of Section 8, paragraph G, and meeting all the other requirements of Frisco's Mechanical Code, as amended.

#### **SECTION 4: Smoking Prohibited in Certain Public Areas.**

- A. A person commits an offense in violation of this Ordinance if he/she smokes or possesses a burning tobacco, weed or other plant product in any of the following indoor and/or enclosed areas:
1. a public or private preschool, primary or secondary school; or
  2. elevators, museums, libraries, galleries, public transportation facilities open to the public and service lines of establishments doing business with the general public; or
  3. hearing rooms, conference rooms, meeting rooms or any public service area of any facility owned, operated or managed by Frisco in which business is conducted, when the public business requires and/or provides an opportunity for direct participation and/or observation by the general public; or
  4. any building which is used for or designated for the purpose of exhibiting any motion picture, stage drama, lecture, musical recital, athletic event or any other event whenever open to the public, including all restrooms and any area commonly referred to as a lobby; however, smoking, which is a part of a stage performance, is permitted; or
  5. any retail or service establishment serving the general public, including but not limited to, any food products establishment, department store, restaurant, grocery store, private club, bingo parlor, bowling center, drug store, shopping mall, hair styling salons, including service lines; or
  6. all restrooms open for public use; or
  7. all areas in a Laundromat open to and available to use by the public; or

8. within all areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including, but not limited to, commercial, financial and professional offices, including banks, hotels and motels; or
  9. within ten (10) linear feet of any entrance of any facility where smoking is prohibited.
- B. Notwithstanding any other provision of this Section, any owner, operator, manager or other person, who controls any establishment or facility described in this Section, may declare that entire establishment or facility as a nonsmoking establishment.
  - C. It shall be a defense to prosecution under this Section that the public place in which the offense takes place does not have prominently displayed a conspicuous notice(s) that smoking is prohibited and that an offense is punishable by a fine not to exceed TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00).

**SECTION 5: Hospitals - Health Care Facilities.** A person commits an offense in violation of this Ordinance if he/she smokes or possesses a burning tobacco, weed or other plant product in any public area of a health care facility or hospital, including, but not limited to, clinics, physical therapy facilities, doctor's offices, nursing and convalescent homes, residential treatment centers/homes and dentist's offices. In bed space areas of health facilities, smoking shall be prohibited unless all patients within the room are smokers and such smoking is ordered on the health care facility's admission form by an attending physician, in keeping with the guidelines established by the facility. Separate ventilation exhaust may be required by the Building Official to accommodate such orders.

**SECTION 6: Posting of Signs.** The owner, operator or person in charge of a facility in which smoking is regulated shall post signs which designate smoking or no smoking areas established by this Ordinance. The manner of such posting shall be at the discretion of the owner, operator manager or other person having control of such room, building or other place so long as the signs are conspicuous and state that smoking is prohibited and that an offense is punishable by fine not to exceed TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00).

**SECTION 7: Compliance.**

- A. The Building Official shall be responsible for compliance with this Ordinance as to facilities which are owned, operated or leased by Frisco. The Building Official shall provide each applicant for a Certificate of Occupancy with a copy of this Ordinance.
- B. The owner, operator, person in charge or manager of any facility, business or agency within the purview of this Ordinance shall comply with the provisions of this Ordinance.
- C. The Building Official, in his sole discretion, may enforce this Ordinance by any of the following actions:
  1. serving written notice on the owner, operator, person in charge or manager of any facility, business or agency within the purview of  
  
this Ordinance, requiring the correction, within a specified reasonable time frame, of any violation of this Ordinance; or
  2. requesting the City Attorney to maintain an action for injunction to enforce the provisions of this Ordinance, to cause the correction of any such violation and

- for assessment and recovery of a civil penalty of such violation, including attorneys' fees; or
- 3. issuing a Municipal Court citation.

The remedies contained herein are cumulative of and in addition to any other remedies that are available to Frisco at law or in equity.

- D. In undertaking the enforcement of this Ordinance, Frisco is assuming an undertaking only to promote the general health, safety and welfare of its citizens. Frisco is not assuming any duty or obligation, nor is it imposing any duty and/or obligation on its officers and/or employees, nor is it liable in money damages or otherwise to any person who claims that (1) Frisco and/or one of its officers and/or employees breached any such obligation, and (2) the breach proximately caused injury.

**SECTION 8: Where Smoking is Not Prohibited.** Notwithstanding any other provision of this Ordinance to the contrary, smoking is not prohibited in the following areas:

- A. private residences, except when used as a licensed child care or health care facility; or
- B. hotel and motel rooms rented to guests; or
- C. retail tobacco stores that have an enclosed, separately ventilated smoking room that exhausts directly to the outside environment; or
- D. any area exterior to the building in which the establishment or facility is located, except as otherwise regulated under Section 4, paragraph 9; or
- E. any enclosed rooms in an establishment or facility which are being used entirely for private parties, events or other social functions; or
- F. enclosed areas of an employer that are not available to or customarily used by the general public; or
- G. in the designated smoking areas of any food products, retail or service establishment serving the general public which has provided a designated smoking area equipped with a functional air purification system or functional separate ventilation system. Such systems shall have a negative pressure on the area designated for smoking to prevent air from a smoking area to be drawn across or into the non-smoking area. All ventilation systems shall provided a total air exchange every fifteen (15) minutes and shall exhaust that air to the exterior of the building. A sign must be posted on the premises in a conspicuous place to advise the public that smoking is permitted in the designated smoking area. Designated smoking areas shall not include restrooms, service lines, public telephone areas, and other areas commonly used by all patrons, including access thereto (called "Common Areas") in new establishments (and/or landowners) making application for a building permit for new construction after the effective date of this Ordinance. Landowners and/or establishments with building permits pending on the effective date of this Ordinance shall comply with these Common Areas requirements to the extent structurally feasible as is reasonably determined by the land owner and/or proprietor of the establishment. This section does not apply to landowners and/or establishments that received a building permit before January 1, 1999; provided, however, such landowner and/or establishment shall comply with the provisions of this section if the fee simple on the establishment undergoes a structural renovation which cost is equal to or exceeds fifty percent (50%) of the value as carried on the current tax roll of the building being renovated. A landowner and/or establishment that received a building permit after January 1, 1999 through the effective date of this Ordinance shall comply with the terms and conditions of this Ordinance on or before January 1, 2002.

**SECTION 9: No Commingling of Air/Testing Requirements.** It is the intent of this Ordinance to define distinct and separate areas for smoking and non-smoking use to assure a smoke-free atmosphere in non-smoking areas and prohibit the commingling of air between such areas. All air purification systems, air barrier systems and air ventilation systems shall be tested and such test shall be observed by the Building Official at the time of installation and at least once every six (6) months thereafter to insure compliance with this Ordinance.

**SECTION 10: Penalty Provision.** Any person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum not exceeding TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Frisco from filing suit to enjoin the violation. Frisco retains all legal rights and remedies available to it pursuant to local, state and federal law.

**SECTION 11: Savings/Repealing Clause.** All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any

violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

**SECTION 12: Severability.** Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Frisco hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

**SECTION 13: Effective Date.** This Ordinance shall become effective from and after its adoption and publication as required by the City Charter and by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this \_\_\_\_\_ day of \_\_\_\_\_ 2000.

\_\_\_\_\_  
KATHLEEN A. SEEI, Mayor

ATTESTED TO AND  
CORRECTLY RECORDED BY:

APPROVED AS TO FORM:

\_\_\_\_\_  
NAN PARKER  
City Secretary

\_\_\_\_\_  
ABERNATHY, ROEDER, BOYD  
& JOPLIN, P.C.  
RICHARD M. ABERNATHY

REBECCA BREWER  
City Attorneys

**DATE(S) OF PUBLICATION:** \_\_\_\_\_, *Frisco Enterprise*